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PTO/SB/64 (09-04)

Approved for use through 07/31/2006. OMB 0651-0031

U.S. Patent and Trademark Office; U.S. DEPARTMENT OF COMMERCE

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**PETITION FOR REVIVAL OF AN APPLICATION FOR PATENT
ABANDONED UNINTENTIONALLY UNDER 37 CFR 1.137(b)**

Docket Number (Optional)

100745.0021US1

First named inventor: Bruce Donoho

Application No.: 09/317,303

Art Unit: 3644

Filed: 05/24/1999

Examiner: F. Palo

Title: Unitary Configured Bird Repellent Apparatus

Attention: Office of Petitions

Mail Stop Petition

Commissioner for Patents

P.O. Box 1450

Alexandria, VA 22313-1450

FAX (703) 872-9306

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OFFICE OF PETITIONS

NOTE: If information or assistance is needed in completing this form, please contact Petitions Information at (703) 305-9282.

The above-identified application became abandoned for failure to file a timely and proper reply to a notice or action by the United States Patent and Trademark Office. The date of abandonment is the day after the expiration date of the period set for reply in the office notice or action plus an extensions of time actually obtained.

APPLICANT HEREBY PETITIONS FOR REVIVAL OF THIS APPLICATION

NOTE: A grantable petition requires the following items:

- (1) Petition fee;
- (2) Reply and/or issue fee;
- (3) Terminal disclaimer with disclaimer fee - required for all utility and plant applications filed before June 8, 1995; and for all design applications; and
- (4) Statement that the entire delay was unintentional.

1. Petition fee

☒ Small entity-fee \$ 685.00 (37 CFR 1.17(m)). Applicant claims small entity status. See 37 CFR 1.27.

☐ Other than small entity - fee \$ _____ (37 CFR 1.17(m))

2. Reply and/or fee

A. The reply and/or fee to the above-noted Office action in the form of Response to Office Action of November 3, 2000 (identify type of reply):

- ☐ has been filed previously on _____.
- ☒ is enclosed herewith.

B. The issue fee and publication fee (if applicable) of \$ _____.

- ☐ has been paid previously on _____.
- ☐ is enclosed herewith.

[Page 1 of 2]

This collection of information is required by 37 CFR 1.137(b). The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11 and 1.14. This collection is estimated to take 1.0 hour to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. **SEND TO: Mail Stop Petition, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.**

If you need assistance in completing the form, call 1-800-PTO-9199 and select option 2.

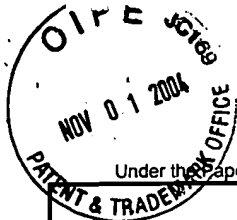
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3. Terminal disclaimer with disclaimer fee

☒ Since this utility/plant application was filed on or after June 8, 1995, no terminal disclaimer is required.

☐ A terminal disclaimer (and disclaimer fee (37 CFR 1.20(d)) of \$ _____ for a small entity or \$ _____ for other than a small entity) disclaiming the required period of time is enclosed herewith (see PTO/SB/63).

4. STATEMENT: The entire delay in filing the required reply from the due date for the required reply until the filing of a grantable petition under 37 CFR 1.137(b) was unintentional. [NOTE: The United States Patent and Trademark Office may require additional information if there is a question as to whether either the abandonment or the delay in filing a petition under 37 CFR 1.137(b) was unintentional (MPEP 711.03(c), subsections (III)(C) and (D)).]

WARNING: Information on this form may become public. Credit card information should not be included on this form. Provide credit card information and authorization on PTO-2038.



Signature

10/27/04

Date

Robert D. Fish

Typed or printed name

33880

Registration Number, if applicable

Rutan & Tucker, 611 Anton Blvd., 14th Floor

Address

(714) 641-5100

Telephone Number

Costa Mesa, CA 92626 US

Address

Enclosures: ☐ Fee Payment

☐ Reply

☐ Terminal Disclaimer Form

☒ Additional sheets containing statements establishing unintentional delay

☐ Other: _____

CERTIFICATE OF MAILING OR TRANSMISSION [37 CFR 1.8(a)]

I hereby certify that this correspondence is being:

☒ Deposited with the United States Postal Service on the date shown below with sufficient postage as first class mail in an envelope addressed to: Mail Stop Petition, Commissioner for Patents, P. O. Box 1450, Alexandria, VA 22313-1450.

☐ Transmitted by facsimile on the date shown below to the United States Patent and Trademark Office as (703) 872-9306.

10/27/04

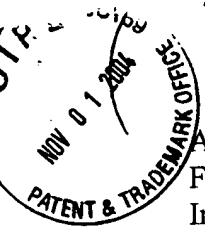
Date



Signature

Barbara Hayashi

Typed or printed name of person signing certificate



Application No.: 09/317,303
Filed: 5/24/99
Inventor: Bruce Donoho
Title: Unitary Configured Bird Repellent Apparatus

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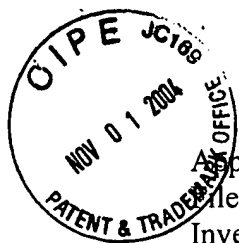
STATEMENT IN SUPPORT OF PETITION FOR REVIVAL OF AN APPLICATION FOR
PATENT ABANDONED UNINTENTIONALLY UNDER 37 CFR 1.137(b)

Applicant/inventor Bruce Donoho hereby states that the entire delay in filing the required reply from the February 3, 2001, due date for the reply until the filing of the attached petition pursuant to 37 CFR 1.137(b) was unintentional.

On or about January, 2002, I instructed my attorney, Leonard Tachner, to transfer all of the Bird-B-Gone files to Robert Fish of Rutan & Tucker. I was informed by Mr. Tachner upon completion of the transfer that all files had been delivered to Rutan & Tucker. On Friday October 15, 2004, after a discussion with my present counsel, Robert Fish, we discovered there was a file missing. I was later informed one file had previously not been transferred, and was still in Mr. Tachner's possession. I immediately instructed Robert Fish on that day to get the file transferred to him. I was advised the application had been deemed abandoned by the USPTO. I then instructed Mr. Fish to revive the application in order to continue prosecution.

Bruce Donoho

Date



Application No.: 09/317,303

Filed: 5/24/99

Inventor: Bruce Donoho

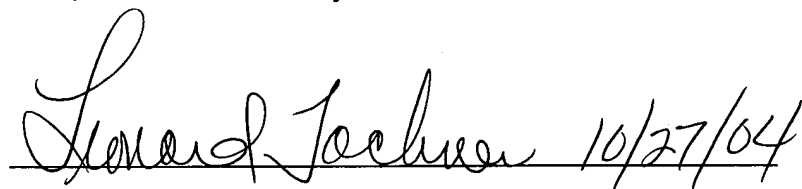
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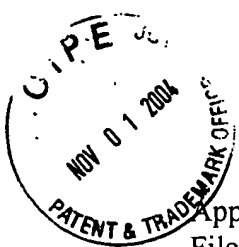
STATEMENT IN SUPPORT OF PETITION FOR REVIVAL OF AN APPLICATION FOR
PATENT ABANDONED UNINTENTIONALLY UNDER 37 CFR 1.137(b)

Prior counsel Leonard Tachner hereby states that the entire delay in filing the required reply from the February 3, 2001, due date for the reply until the filing of the attached petition pursuant to 37 CFR 1.137(b) was unintentional.

On or about January, 2002, I was instructed by my client, Bruce Donoho, to transfer all of his files (i.e. Bird-B-Gone) to Rutan & Tucker. At that time, it was my belief that all files had properly been delivered to Rutan & Tucker. However, it now turns out that one of the files was misfiled, and was not transferred with the others. My office was informed of this on October 15, 2004, and we immediately couriered the file to Rutan & Tucker.


Leonard Tachner

10/27/04
Date



Application No.: 09/317,303

Filed: 5/24/99

Inventor: Bruce Donoho

Title: Unitary Configured Bird Repellent Apparatus

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OFFICE OF PETITIONS

STATEMENT IN SUPPORT OF PETITION FOR REVIVAL OF AN APPLICATION FOR
PATENT ABANDONED UNINTENTIONALLY UNDER 37 CFR 1.137(b)

I, Robert D. Fish, attorney of record, hereby states that the entire delay in filing the required reply from the February 3, 2001, due date for the reply until the filing of the attached petition pursuant to 37 CFR 1.137(b) was unintentional.

On or about January, 2002, we received the set of Bird-B-Gone files from their prior counsel, Leonard Tachner. We were informed that all files had been sent to us. On Friday October 15, 2004, after a discussion with Bruce Donoho, we discovered there was a missing file. We contacted Mr. Tachner's office, and they at first informed us they did not have the file. After further discussion and a search by Mr. Tachner's office, they found that the file had been misfiled, and couriered it over to us. A review of the file indicates that the application had been deemed abandoned on June 7, 2001. I was instructed by Mr. Donoho to revive the application in order to continue prosecution.

Robert D. Fish
Reg. No. 33880

Date